

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PORTSIDE GROWTH AND OPPORTUNITY
FUND,

Plaintiff,

-against-

GIGABEAM CORPORATION,

Defendant

Case No. 07 Civ. 6990 (NRB)

PLAINTIFF'S STATEMENT OF UNDISPUTED MATERIAL FACTS

Plaintiff Portside Growth and Opportunity Fund ("Portside"), by its attorneys, Olshan Grundman Frome Rosenzweig & Wolosky LLP, respectfully submits this Statement of Material Facts as to which there is no genuine issue to be tried, pursuant to Rule 56.1(a) of the Local Rules for the United States District Court for the Southern and Eastern Districts of New York, and in support of its Motion for Summary Judgment.

1. Plaintiff Portside is a Cayman Islands corporation.
2. Defendant GigaBeam Corporation ("GigaBeam") is a Delaware corporation with its principal place of business in Virginia.
3. In November 2005, GigaBeam adopted a Certificate of Designation of Preferences, Rights and Limitations of Series B Convertible Stock (the "Certificate of Designation"), and issued shares of Series B Convertible Preferred Stock (the "Preferred Stock"). (Smith Decl. ¶ 3)

4. Exhibit A to the accompanying Declaration of Jeffrey C. Smith is a true and correct copy of the Certificate of Designation as filed by GigaBeam with the Securities and Exchange Commission (“SEC”).

5. In November 2005, GigaBeam also entered into the Registration Rights Agreement (the “Registration Rights Agreement”) under which it became obligated to file a registration statement, called the Conversion Shares Registration Statement, for the shares of common stock into which the Preferred Stock would be converted.

6. Exhibit B to the accompanying Declaration of Jeffrey C. Smith is a true and correct copy of the Registration Rights Agreement, as filed by GigaBeam with the SEC.

7. In June 2006, plaintiff Portside acquired 342 shares of Preferred Stock from an original investor, Omicron Master Trust (“Omicron”). (Smith Decl. ¶ 6; Ex. C)

8. Since June 2006, Portside has received notices from GigaBeam as a holder of Preferred Stock. (Smith Decl. ¶ 7)

9. Exhibit E to the accompanying Declaration of Jeffrey C. Smith is a true and correct copy of the share certificate issued to Portside by GigaBeam.

10. On October 4, 2006, GigaBeam amended the Conversion Shares Registration Statement to show Portside as a “Selling Stockholder.” (Smith Decl ¶ 7; Ex. F at p. 4)

11. Exhibit F to the accompanying Declaration of Jeffrey C. Smith is a true and correct copy of the Conversion Shares Registration Statement, as filed with the SEC in October 2006.

12. By letter dated April 25, 2007, GigaBeam notified Portside, as a holder of Preferred Stock, that the effectiveness of the Conversion Shares Registration Statement had been suspended by the SEC. (Smith Decl. ¶ 9; Ex. G)

13. Exhibit G to the accompanying Declaration of Jeffrey C. Smith is a true and correct copy of the above letter.

14. The Conversion Shares Registration Statement remained suspended for at least sixty days after April 25, 2007. (Smith Decl. ¶ 9)

15. On July 10, 2007, Portside delivered a redemption notice to GigaBeam (the “Initial Redemption Notice”). (Smith Decl. ¶ 10; Ex. H)

16. Exhibit H to the accompanying Declaration of Jeffrey C. Smith is a true and correct copy of the Initial Redemption Notice.

17. On July 18, 2007 Portside delivered a revised redemption notice which demanded 222,043 shares (the “Amended Redemption Notice”). (Smith Decl. ¶ 10; Ex. I)

18. Exhibit I to the accompanying Declaration of Jeffrey C. Smith is a true and correct copy of the Amended Redemption Notice.

19. At the time of each redemption notice, the Conversion Shares Registration Statement remained suspended by the SEC. (Smith Decl. ¶ 10)

20. The “Triggering Redemption Amount” based on Portside’s 342 shares of Preferred Stock equaled \$451,486.26 as of July 10, 2007. (Smith Decl. ¶ 12)

21. Five trading days after the Initial Redemption Notice was July 17, 2007.

22. Five trading days after the Amended Redemption Notice was July 25, 2007.

23. GigaBeam has not delivered any common stock to Portside. (Smith Decl. ¶ 13)

24. Exhibit J to the accompanying Declaration of Jeffrey C. Smith is a true and correct copy of the trading activity in GigaBeam common stock from June 1, 2007 through August 10, 2007.

25. Exhibit L to the accompanying Declaration of Jeffrey C. Smith is a true and correct copy of the Form 10-Q for the quarter ended June 30, 2007 filed by GigaBeam with the SEC.

Dated: New York, New York
October 5, 2007

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